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7 BEFORE THE OFFICE OF THE INSURANCE COMMISSIONER  
8 OF THE STATE OF WASHINGTON  
9

10 In The Matter Of The Application Regarding  
11 The Conversion And Acquisition Of Control  
12 Of Premera Blue Cross And Its Affiliates

No. G02-45

INTERVENERS' MOTION FOR  
EMERGENCY HEARING

13 **MOTION**

14 Interveners respectfully request a hearing before the Commissioner at the  
15 earliest possible opportunity for the purpose of addressing the following topics:

16 1. Whether, after the deadline for filing an amended Form A that was  
17 established in the Thirteenth and affirmed in the Seventeenth and Eighteenth Orders,  
18 and after sworn testimony has begun to be taken at public hearings, Premera will be  
19 permitted to propose or make substantive changes to the proposed conversion  
20 transaction by submitting a revised or supplemental Form A filing; and

21 2. Whether such a submission triggers a new review period,  
22 including discovery, under Washington's Holding Company Acts, and would halt the  
23 current proceedings.  
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## BACKGROUND

On Wednesday, November 24, 2003, during the lunchtime break from depositions of the parties' experts, Interveners were informed by the OIC Staff that Premera's representatives had requested a meeting with the OIC Staff to discuss the possibility of amending their Form A filing. Interveners were not invited to participate in this meeting. *See* Declaration of Eleanor Hamburger dated December 3, 2003.

On Friday, November 26, 2003, Interveners learned from the OIC Staff that Premera and the OIC Staff intend to continue their discussions regarding the procedures and timelines for Premera to file an "amended" or "supplemental" Form A filing. *Id.* Interveners were informed that such discussions may result in a joint proposal from Premera and the OIC Staff very shortly. Interveners have been told only the broad outline of the contemplated proposal, which could include an added 60 days for the review process during which Premera would continue its private negotiations with the OIC Staff, file a revised Form A, allow for the OIC Staff experts to do a shortened review of the new proposal, and reschedule the current administrative hearing process. *Id.*

On Tuesday, December 2, 2003, Interveners learned that no agreement between Premera and the OIC Staff had been reached. The OIC Staff indicated that an agreement between Premera and the OIC Staff may still be possible. *Id.*

The Insurance Commissioner held the first of four public forums on Tuesday, December 2, 2003. *See* Sixteenth Order: Notice Regarding Public Hearing Procedures and Setting of Conference; "32 Testify at Premera Hearing," *Spokesman Review*, December 3, 2003. Testimony at the public forum occurred under oath and subject to cross examination. *Id.* The Insurance Commissioner has ruled that the testimony submitted at the public hearings will be considered along with evidence

1 submitted at the hearing scheduled for January 15-28, 2004, citing to RCW 34.05.452.  
2 *Id.*

### 3 **ARGUMENT**

4 Interveners seek an emergency hearing to determine whether Premera  
5 may revise its Form A filing at this late date in the proceedings. Interveners object to  
6 Premera amending, revising, supplementing, or otherwise changing its Form A filing  
7 at this late date in the proceedings. However, if Premera is permitted to revise its Form  
8 A filing, then the current proceedings and discovery should be immediately halted,  
9 while Premera submits a new Form A filing. Once a new Form A is submitted and  
10 determined complete, a new review period under the Washington State Holding  
11 Company Acts should begin. Due process and basic fairness requires that Interveners  
12 and the public participate in a proceeding based upon a known and public proposal.  
13 Interveners and the public should not be required to expend valuable time and  
14 resources on a Form A filing review that may be changed mid-hearing. *See Fourth*  
15 *Order (the Insurance Commissioner intends "to enforce procedures for discovery and*  
16 *the hearing that will ensure a fair process, but also an efficient one that avoids*  
17 *redundancy and unnecessary delay").*

18 Under the Thirteenth Order, if Premera elected to submit an amended  
19 Form A application, it was required to do so by October 15, 2003. Premera failed to  
20 amend its Form A filing by the October 15 deadline. Instead, Premera attempted to  
21 engage the OIC Staff in separate, off-the-record negotiations which Premera hoped  
22 would result in presentation of an agreement between the OIC Staff and Premera  
23 regarding the proposed conversion, possibly on the eve of the administrative hearing.  
24 *See Declaration of James T. Odiorne dated October 21, 2003 and attachments.*

25 The OIC Staff soundly rejected Premera's proposal for secret negotiations  
26 and joined with Interveners to request an emergency hearing before the Insurance

1 Commissioner, which occurred on October 22, 2003. As Deputy Insurance  
2 Commissioner James Odiorne wrote at the time, the Insurance Commissioner has made  
3 "public representation, from the very beginning of this matter, that the process would  
4 be as public as possible. I am afraid that if we negotiate up until the time of the  
5 hearings, and at that time present some 'agreement,' we will have created a perception  
6 that the process was not public and that this was a back room process."<sup>1</sup> After the  
7 emergency hearing on October 22, 2003, the Insurance Commissioner issued his  
8 Seventeenth Order, finding that "...the terms of the proposed transaction that are the  
9 subject of review in these proceedings are those submitted by Premera as of  
10 October 5, 2003." The Insurance Commissioner's Order clearly precludes any further  
11 amendment to the Form A filing under these proceedings.

12 Premera sought clarification of this exact sentence in the Seventeenth  
13 Order, perhaps to lay the groundwork for further private negotiations with the OIC  
14 Staff. In response, the Insurance Commissioner issued the Eighteenth Order, in which  
15 he found "...I will consider the terms of the transaction as described in the Form A  
16 submitted by Premera as of October 15, 2003, which was the deadline for filing  
17 amendments."

18 The Insurance Commissioner's Orders are clear. Nothing submitted by  
19 Premera after October 15, 2003 can be used to change the terms of the transaction.  
20 Evidence can be submitted about those terms, but after October 15, 2003, the terms of  
21 the proposed conversion cannot be changed, amended, revised, supplemented or  
22 conditioned by Premera.

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25 <sup>1</sup> Email from Jim Odiorne to Yori Milo dated October 10, 2003, Exhibit A to Declaration of James T.  
26 Odiorne dated October 21, 2003.

<http://www.insurance.wa.gov/special/premera/filing/ExhibitA101003E-mailJimOtoYoriM.pdf>.

1 Premera has known for many months about the problems identified in  
2 the OIC Staff's expert reports. Apparently, in February 2003, the OIC Staff and experts  
3 met with Premera and identified for the company the serious deficiencies in Premera's  
4 Form A filing. Declaration of James T. Odiorne dated October 21, 2003 at 3. Despite  
5 having known for many months of the OIC experts' concerns, Premera did nothing to  
6 revise its proposal. *Id.* Even after reviewing the OIC experts' draft reports in October,  
7 Premera failed to take action to change its conversion proposal.<sup>2</sup> Premera can hardly  
8 claim now to be surprised about the OIC experts' reports or opinions.

9 Premera may argue that the OIC Staff has an obligation to assist  
10 regulated companies to meet the standards articulated under the Holding Company  
11 Acts, and that obligation requires the Staff to meet and negotiate with Premera now.<sup>3</sup>  
12 Even if there is such a duty, it does not require what Premera is now orchestrating.  
13 The OIC Staff have more than fulfilled any duty they have towards Premera. OIC Staff  
14 have repeatedly indicated to Premera the problems with its Form A filing over the  
15 course of many months. Even before the OIC expert reports were final, the OIC Staff  
16 were willing to continue to work with Premera to assist it in revising its Form A filing.  
17 Despite all of the OIC Staff's cooperation and offers of assistance, Premera refused to  
18 amend its Form A filing by the October 15, 2003 deadline. If the OIC Staff had any  
19 duty or obligation to assist Premera to file a workable Form A, that duty ended once  
20 the deadline for revising the Form A filing passed. If Premera wants to take the OIC  
21 staff's and experts' advice about its deficient filing, the remedy is a new filing, not a  
22 grossly untimely attempt to amend the current filing.

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24 <sup>2</sup> The sole exception to Premera's inaction in the face of the OIC experts critiques, was the  
25 submission on October 17, 2003, of Premera's plan for stock ownership upon conversion.

26 <sup>3</sup> Interveners do not concede that such an obligation exists under the Holding Company Acts, nor if  
it exists, that it should outweigh the public interest in having a transparent process.

1 Premera's attempt to privately negotiate with the OIC Staff would take  
2 this proceeding out of the public limelight and hide it from scrutiny. The OIC experts'  
3 reports are blistering critiques of Premera's proposed conversion. The reports have  
4 drawn public attention and, indeed, outcry against the conversion. See "The Premera  
5 Decision: Oppose Conversion," *Seattle Times* editorial dated November 24, 2003;  
6 "Premera conversion unlikely to serve the public interest," *The Tacoma News Tribune*,  
7 November 28, 2003; "Premera Conversion would be Unhealthy, Unwise," *The*  
8 *Spokesman Review* Opinion Editorial dated December 1, 2003. The first of four public  
9 hearings regarding the conversion was held on December 2, 2003 where 32 people  
10 testified and hundreds more attended. "32 Testify at Premera Hearing," *Supra*. The  
11 public hearings bear all the hallmarks of a formal administrative hearing (testimony  
12 under oath and the opportunity for cross examination), and are therefore have marked  
13 the beginning of the actual adjudicative proceeding. Now that the hearing has begun,  
14 it is simply too late for Premera to propose changes to the subject matter of the hearing,  
15 its Form A filing.

16 Nevertheless, now, in the midst of the public hearings, Premera is  
17 negotiating to halt the public process, and move the real action out of public view.  
18 Premera apparently seeks to cut a back-room deal, while at the same time cutting out  
19 not only the public at large but also Interveners who have been granted status as  
20 parties in the ongoing proceeding. Premera should be prevented from any further  
21 changes to its Form A filing as part of this proceeding.

22 Nothing in the Washington Holding Company Acts explicitly permits a  
23 company to re-file, amend, revise or supplement a Form A filing, once the Form A  
24 filing has been submitted. Indeed, due process and fairness requires that the  
25 procedures outlined in the Insurance Commissioner's Thirteenth Order be followed,  
26 including the deadline for amending the Form A filing. Premera's conversion proposal

1 must stop being a “moving target” so the all the parties and the public can give  
2 meaningful input into this proceeding.

3 While Premera may claim to suddenly be willing to address the long-  
4 standing objections raised by the OIC Staff and experts, such late-found cooperation  
5 should not be permitted to derail the process into which all parties, including the  
6 Interveners, and the public have invested significant time, expense and effort. Premera  
7 is free at any time to withdraw its conversion proposal. If, after withdrawing its  
8 proposal, Premera attempts to convert again, it should be required to file a new Form  
9 A and begin the process anew.

10 In order to maintain the integrity of the ongoing hearing process, and to  
11 remain faithful to the intent of the Holding Company Acts, Interveners request a ruling  
12 by the Commissioner that, if Premera proposes, suggests or agrees to any substantive  
13 change to the structure of the proposed conversion transaction, such a change will be  
14 treated as the withdrawal of the current proposal and submission of a new Form A,  
15 thereby halting all current discovery in this proceeding, and triggering a new full  
16 review, including time for discovery, under the Acts.

17 **RELIEF REQUESTED**

18 Interveners respectfully request entry of an Order as follows:

19 If Premera proposes, requests or agrees to substantive changes, revisions,  
20 amendments, supplements or conditions to the proposed conversion transaction, the  
21 proposed changes will not be considered unless Premera withdraws its pending Form  
22 A filing and submits a new revised Form A filing, which would immediately halt this  
23 current proceeding (including discovery procedures) and, when deemed complete, will  
24 trigger a new review period, including discovery, under the Holding Company Acts.  
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1 Interveners will make themselves available at the Commissioner's  
2 convenience for an emergency hearing, and respectfully request that the Commissioner  
3 establish a schedule for any further briefing regarding the same, if such is deemed  
4 necessary.

5 Dated this 3<sup>rd</sup> day of December, 2003.

6 SIRIANNI YOUTZ  
7 MEIER & SPOONEMORE

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9 By: /s/ RICHARD E. SPOONEMORE  
10 Richard E. Spoonemore, WSBA #21833  
11 Attorney for Interveners Washington  
12 Citizen Action, American Lung  
13 Association of Washington, Northwest  
14 Federation of Community Organizations,  
15 Northwest Health Law Advocates, Service  
16 Employees International Union  
17 Washington State Council, The Children's  
18 Alliance, Washington Academy of Family  
19 Physicians, Washington Association of  
20 Churches and Washington State NOW  
21 Washington Association of Community  
22 and Migrant Health Centers, Washington  
23 Protection and Advocacy System

24 On behalf of all Intervener Groups.  
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